

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JODIE DOMINICK,

Plaintiff,

v.

**PAPER MACHINERY CORPORATION,
et al.,**

Defendants.

CIVIL ACTION

No. 03-2410-CM

MEMORANDUM AND ORDER

Plaintiff in the instant matter asserts claims of strict liability and negligence against defendant Paper Machinery Corporation (PMC). This matter is before the court on defendant PMC's Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted (Doc. 14).

I. Facts

Plaintiff filed this cause of action against defendant PMC for alleged injuries she sustained on or about October 4, 2001. Specifically, plaintiff alleges that, while working in the course and scope of her employment with her employer Hallmark Cards, Inc., plaintiff sustained serious and permanent injuries while operating a No. XG-1000-70-3677 machine.

In Count I, plaintiff asserts a cause of action for strict liability. Plaintiff alleges that PMC designed, manufactured, assembled, supplied, sold and placed into the stream of commerce the XG-1000-70-3677, including its related components. (First Amended Complaint, ¶ 14). Plaintiff alleges

that the XG-1000-70-3677, and/or its related component parts, was then in a defective condition and unreasonably dangerous when put to a reasonably anticipated use because PMC a) failed to keep the operator out of the “zone of danger,” b) failed to incorporate necessary guards over pinch points, and other points of foreseeable danger, c) provided confusing misleading controls, d) failed to provide a viable safety shut-off, e) required the operator to be in a “zone of danger” as part of the normal operations of the machine, f) failed to interlock guards such as to de-energize moving parts and pinch points, and g) failed to provide sufficient and adequate warnings or instructions to reasonably anticipated users related to the dangers associated with the use of the machine. (*Id.*, ¶ 15). Plaintiff alleges that, as a result of the defective condition, plaintiff sustained personal injuries. Plaintiff seeks an award “for actual damages in an amount in excess of Seventy-Five Thousand and no/100 Dollars (\$75,000), and further requests an award of punitive and exemplary damages that will punish defendant and deter defendant and others from such conduct in the future.” (*Id.*, pg. 5-6).

In Count II, plaintiff asserts a negligence claim against PMC. Plaintiff alleges that, at the time the XG-1000-70-3677 at issue was sold, manufactured and distributed, PMC knew or, in the exercise of reasonable care, should have known that serious defects existed in the lift. (*Id.*, ¶ 20). Plaintiff then realleges the conduct set forth in subsections a) through g) above, and requests an award of punitive damages.

II. Standard

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d

1302, 1304 (10th Cir. 1998), or when an issue of law is dispositive, *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff, *Witt v. Roadway Express*, 136 F.3d 1424, 1428 (10th Cir. 1998). The issue in resolving a motion such as this is not whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984).

III. Discussion

PMC argues that plaintiff's claims for punitive damages should be dismissed. Specifically, PMC contends that plaintiff has failed to plead sufficient facts to support a claim for punitive damages.

Under Kansas law, punitive damages may be awarded to punish a wrongdoer for malicious, vindictive, or willful and wanton invasion of another's rights. As such, in order to recover punitive damages, a plaintiff must both *plead* and prove that defendant's conduct was willful, wanton, fraudulent, or malicious. *Trotter v. K Mart Corp.*, 1994 WL 123614, at *1 (D. Kan. Mar. 3, 1994).

"[A] 'wanton act' is defined as something more than ordinary negligence but less than a willful act. It must indicate a realization of imminence of danger and a reckless disregard and indifference to the consequences." *Cerretti v. Flint Hills Rural Electric Co-op. Ass'n*, 251 Kan. 347, 368-69, 837 P.2d 330 (1992). Thus, the acts complained of must show not simply lack of due care, but that the defendant must be deemed to have realized the imminence of injury to others from its act and to have refrained from taking steps to prevent injury because it was indifferent to whether it occurred or not. *Id.*

Assuming all inferences in favor of the plaintiff from the face of the proposed amended complaint, the court finds that sufficient facts have been alleged to bring a punitive damages claim. Plaintiff sets forth the alleged product defects, then states that PMC “*knew* or, in the exercise of reasonable care, should have known that serious defects existed in the lift.” If proven, such conduct could constitute wanton conduct. Accordingly, at this juncture in the litigation, the court declines to dismiss plaintiff’s punitive damages claim against PMC.

IT IS THEREFORE ORDERED that PMC’s Motion to Dismiss for Failure to State a Claim upon Which Relief Can Be Granted (Doc. 14) is denied.

Dated this 25 day of March 2004, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge

